

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 6864 of 1992

Between:

K.Nagaraju sonof Pamanna, residing at
Pattennapalem,Jangareddygudem Mandal,
West Godavari district.

..... PETITIONER

AND

- 1.Government of A.P. represented by
Secretary, Social Welfare Department,
Secretariat Buildings, Hyderabad.
- 2.Agent to Government (District Collector)
West Godavari dist.Eluru.
- 3.Special Deputy Collector, T.W. Eluru.
- 4.Chavalam Mutyalu son of Mutyalu, residing at
Pidakapapagudem H/o Pattempannapelm,
Jangareddygudem Mandal, West Godavari dist.
- 5.Chavalam Laxmudu sonof Mutyalu, residing at
Pidakapapagudem H/o Pattempannapelm,
Jangareddygudem Mandal, West Godavari dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or other appropriate Writ or order of directions in the nature thereof to call for the records from respondents 1 to 3 and to quash the orders dated 19-1-1987 in S.R.A.51/85 on the file of the Agent to Government (District Collector) West Godavari District Eluru and (ii) confirmed by the Government of A.P. Hyderabad in Memo 586/F/296 dated 15-4-1992 directing eviction of the petitioner from the lands Ac.3.40 cents out of Ac.7.50 cents in R.S.19/1 and Ac.1.00 in R.S.19/3 in Sitaramanagaram village, Plolavaram taluk.

Counsel for the Petitioner: MR.P.R.K.AMERANDRA KUMAR

Counsel for the Respondent Nos.1 to 3: GP FOR SOCIAL WELFARE

Counsel for the Respondent Nos. 4 and 5 : None appeared.

The Court made the following :

ORDER

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In this Writ Petition, the petitioner by way of writ of Certiorari seeking to quash the orders passed by the respondents dated 19-1-1987.

The case of the petitioner is that he inherited the lands in question from his father Akula Thammayyu, who was in possession and enjoyment of the same for past several years. The Special Deputy Tahsildar filed a complaint that the lands are in the possession of the petitioner, a non tribal by obtaining it by sale from the father of the respondents 4 and 5. On consideration of evidence the Special Deputy Collector (T.W.) Eluru by his order dated 28-12-1983 held that the lands in question did not belong to tribals and disallowed the claim. On the appeal the Agent to Government allowed the appeal and restored the land to the respondents 4 and 5, which is erroneous and contrary to law. The petitioner filed W.P.3309 of 1987 to quash the order and the Hon'ble High Court directed the petitioner to avail remedy by filing a revision and the petitioner accordingly filed revision before the Government of A.P. seeking suspension of impugned order dt.4-2-1987 and the same was dismissed.

Hence the petition.

The respondents filed counter affidavit stating that the lands are in possession and enjoyment of the petitioner who is a non tribal by obtaining them by sale from the father of respondents 4 and 5 who are tribals. The burden of proof lies with the petitioner to prove that he has not acquired the land in Agency Areas without attracting the provisions of the A.P.S.A.L.T.R.1959 Regulation I of 1970 and A.T.I. and I.T.Act, 1917 and the non tribal petitioner failed to discharge the burden. The father of the petitioner came into possession of the land only by 1949 prior to which the tribal 4th respondent was in occupation of the land in question and such transfer of land from tribal to non tribal is contrary to law.

Heard both the counsel and perused the material available on record.

As seen from the record, it is clear that the lands in question were in possession and enjoyment of the petitioner who is a non tribal having obtained the same by sale from the respondents 3 and 4 who are tribals. On a complaint by the Special Tahsildar, the Special Deputy Collector (T.W.) on thorough enquiry came to the conclusion that the lands never belonged to tribals. On a appeal carried by the respondents 4 and 5, the Agent to Government (District Collector) allowed the claim of the respondents 4 and 5 and held that the schedule lands be restored to the respondents 4 and 5. Thereupon, the petitioner filed the Writ Petition before the Hon'ble High Court in which the High Court directed to avail remedy by filing a revision petition before the Government. Accordingly, the petitioner filed the revision before the Government, which was also dismissed. Apart from that the petitioner has not filed any document to show that he was in possession and enjoyment of the lands in question. As seen from the counter, the father of the petitioner came into possession of the lands only by 1949 and prior to that the 4th respondent was in possession and enjoyment of the same. The transfer of land from a tribal to non tribal is contrary to law as per Section 4(1) of the A.T.I. and L.T.Act, 1917. On consideration of the evidence, the Appellate authority rightly reversed the orders of the lower Court and came to the conclusion that the records were fabricated and that they have no evidentiary value. On considering the facts and circumstances of the case, I do not see any ground to entertain the writ petition. The writ petition is meritless and it is accordingly dismissed. No costs.

11-11-2004.

Hsd

Asst.Registrar

// true copy //

Section officer

To

1.The SecretaryGovernment of A.P. Social Welfare Department,
Secretariat Buildings, Hyderabad.

2.Agent to Government (District Collector)

West Godavari dist.Eluru.

3.Special Deputy Collector, T.W. Eluru.

4. 2 C.Cs to G.P. for Social Welfare, High Court Buildings, Hyderabad (OUT)

5. 2 C .D. copies.